

would that refresh your recollection as to what loss
 864 Wilhelm von Opel suffered. (Plaintiff's Exhibit 82
 for identification was handed to the Witness.) A.
 At that time so many figures were mentioned that I do
 not recall—that I do not know how big, actually, the dam-
 ages of Mr. Wilhelm von Opel were.

Q. Mr. DeKu, I want to take you back for a moment to
 the dinner which I believe you said you attended with Wil-
 helm von Opel. Will you again state the date of that din-
 ner? A. It was in the summer of 1934.

Q. And will you again state who was present at that
 dinner? A. Major von Mudra, Count von Schwerin, and
 my brother.

Q. Your brother was there? A. Yes.

Q. You failed to mention the presence of your brother
 when you were testifying on direct examination, did you
 not?

Mr. Burling: I object to that on the ground that it is
 a direct misstatement of the testimony. The witness did
 mention that his brother was there.

The Court: You may ask him if he mentioned it, to the
 best of his recollection. He objects to your making an
 assertion; you will have to ask it in the form of a question.

Mr. Ingoldsby: I did not understand Your Honor's rul-
 ing. I will put it this way.

By Mr. Ingoldsby:

865 Q. In your direct examination did you or did you
 not mention that your brother was present at that
 dinner? A. I think I stated that he was present.

Q. Are those the only people who were there? A. I
 think so, yes.

Q. Is it not a fact that Dr. Gros was present at that din-
 ner? A. No, Dr. Gross was not present there.

Q. Are you absolutely certain about that? A. Yes.

Q. If I told you that your brother reported to the German authorities after he was in prison that Dr. Gros was present at that dinner, would that refresh your recollection? A. Then I must say that my brother was in error. My brother had dinner on many occasions with Mr. Wilhelm von Opel, and I had only one.

Q. That dinner, again, was in the summer of 1934? A. Yes.

Q. And yet today, in 1948, you are absolutely positive about who was present at that dinner? A. I am certain about the fact that Dr. Gros was not present there.

Q. Will you state again the statement which you attribute to Wilhelm von Opel at the time of that dinner? A.

He said that upon the question how it happened that 866 he was willing to pay such a substantial fine, he stated that it was well worth to him to pay that in order to have assets outside of the German locked safe.

Q. Did he say anything else? A. He also poked fun at the German authorities which could be taken in so easily.

Q. Did he say anything else? A. He talked a lot, but I do not recall.

Q. The only portions of the conversation through the entire dinner that you remember are the conversations which you have just stated, is that correct? A. Yes, because that was the most striking thing for me.

Q. And do you recall that he used the words that he wanted to have his money outside of the German locked safe? A. Yes, this pregnant expression struck my attention.

Q. And did you know what he was talking about? A. Yes.

Q. What was he talking about? A. He talked about the payment of the fine and the transfer of the money abroad.

Q. When you say transfer of money abroad, what money are you talking about? A. What I am referring to is the proceeds from the sale of the Opel Works.

867 Q. And is that what Mr. von Opel was referring to? A. Yes, to my recollection.

Q. How do you know that? A. That is what I remember.

Q. Do you now remember that Mr. von Opel at that dinner said something about the proceeds from the Opel sale?

A. I do not believe that a detailed discussion was had about that.

Q. I am not asking if there was a detailed discussion, I am asking if there was any mention of the Opel proceeds.

A. I believe it was mentioned.

Q. Are you sure that it was mentioned? A. I must conclude from the context that it was mentioned.

Q. You will agree that if it was not mentioned, then the conversation did not make any sense at all, did it? A. That is why I said that I believe that I am convinced that it was mentioned.

Q. Was your deposition taken in Germany while Wilhelm von Opel was still alive? A. I was questioned for the first time about two or three months ago.

Q. When did you first go to the American authorities in connection with this case? A. I did not call upon
868 the American authorities. The American authorities called on me.

Q. Did anyone tell you to say that? A. No.

Q. Do you know how they happened to call upon you? A. No, I do not know.

Q. Where is Count von Schwerin at the present time?

A. I do not know.

Q. When was the last time you saw him? A. I do not remember exactly. It may have been 1936 or 1937. I think it was in 1937.

Q. What is the name of the other individual whom you said was at this dinner? A. Major von Mudra, M-U-D-R-A.

Q. And when was the last time you saw him? A. I saw him for the last time in 1941 or 1942.

Q. And to your knowledge, neither of these individuals are in the United States now, is that correct? A. I do not know that.

Q. When you talked to the American authorities about two months ago did you mention the name of your brother, Erik Deku? A. The American authorities have mentioned the name of my brother.

Q. The mentioned your brother's name to you, 863 not you to them? A. Yes.

Mr. Ingoldsby: Will you mark this Plaintiff's Exhibit the next number (handing document to the Clerk).

(Accordingly, the document referred to was marked Plaintiff's Exhibit 83 for identification.)

Mr. Ingoldsby: Strike that number, will you please, I don't think I want to use that.

(Accordingly, Plaintiff's Exhibit 83 for identification was withdrawn.)

By Mr. Ingoldsby:

Q. When you talked to your brother just before you came here to the United States, did your brother tell you about any communications which he has had with the Opel family? A. He only mentioned to me that a few days before Dr. Gros had addressed a letter to him requesting him to pay his old debts.

Q. I am going to read you something and ask you if this refreshes your recollection about who was present at the dinner.

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870 Q. I wanted to ask you one other question. Did you make a statement to the American—what military authorities? A. In this matter?

Q. In this matter. A. Yes, I made a statement to the agent of the Department of Justice in Frankfurt.

Q. When? A. Two months ago.

871 Q. Was that statement reduced to writing? A. Yes.

Q. Did you sign it? A. Yes.

Q. And in that statement did you say anything about a discussion of Nazi pressure during the dinner in 1934? A. No.

Q. I want to ask you, Mr. Deke, how old you were in 1934. A. I was 38 years of age.

Q. Do you know how old Wilhelm von Opel was at the same time? A. I do not know that.

Q. Would you not estimate him to have been a man about 60 or 65 years of age? A. I believe him to be about 60 years old.

Q. And at that time he was one of the leading industrialists in Germany, was he not? A. Yes.

Q. And he was the principal client of your bank, was he not? A. Yes.

Q. And is it your testimony now that he made a statement to you, a bank clerk, which was punishable by death—which could be punishable by death? A. Yes, he 872 was excited, and I was the brother of my brother.

Q. And he made that statement in a public restaurant? A. The statement that he was about to be penalized he made in the office.

Mr. Ingoldsby: I have no further questions.

Redirect Examination

By Mr. Baum:

Q. Mr. Deku, on your direct examination in referring to the conversation with Wilhelm von Opel in the office of your brother in the spring of 1934, did you say that Wilhelm von Opel said that he had taken assets out of Germany, or had transferred assets out of Germany? A. The question, whether I said that or not just now?

Q. I am asking you what you said on your direct examination. A. I cannot recall the precise term, because I didn't, I wasn't concerned with the difference.

Q. I ask you now, Mr. Deku, in the conversation in your brother's office in the spring of 1934, at which your brother and Wilhelm von Opel were present, did Wilhelm von Opel state that he had taken assets out of Germany, or had transferred assets out of Germany? A. I cannot recall the precise terms that we used.

Q. Referring to your dinner with Wilhelm von Opel and the other gentlemen in the Newa Grill, was there any circumstance of that dinner which fixed it in your mind? A. Yes, that was the only time that I ever had dinner with Mr. Wilhelm von Opel.

Q. And I believe you testified in response to Mr. Ingoldsby's questions that you knew that Wilhelm von Opel was a very prominent man in Germany is that correct? A. Yes.

Q. And did you ever have dinner with Wilhelm von Opel at any other time? A. No.

Q. Now, Mr. Deku, Mr. Ingoldsby asked you about being questioned in Germany some two months ago. You were questioned by representatives of the Department of Justice, is that correct? A. Yes.

Q. Did any attorney of the Department of Justice who questioned you in the United States question you in Germany? A. No.

Mr. Baum: That is all.

Mr. Ingoldsby: No questions.

The Court: You are excused.

(Witness excused.)

Mr. Burling: Your Honor, I am not going on indefinitely about Liechtenstein, but yesterday my friends re-
874 fused to stipulate some facts which I think the Court will take judicial notice of, to compare against the Witness von Opel's testimony concerning the country of which he claims to be a citizen.

At this time I request the Court to take judicial notice, on the basis of a standard book of reference, the Information Please Almanac for 1947, that Liechtenstein became independent in 1866, and the reigning prince is Franz Josef II, who succeeded to the throne in 1938, and that the Landtag, or legislative chamber of Liechtenstein has 15 members.

The Court: Any objection?

Mr. Gallagher: No objection.

The Court: All right, I will take judicial notice of that. Is there any reason why Mr. DeKu may not return to Germany?

Mr. Ingoldsby: We have no further need for him.

Mr. Burling: We will make arrangements, then, to return him as soon as we can.

The Court: All right. Mr. von Opel, I believe, will resume the stand.

Whereupon—FRITZ VON OPEL, resumed the stand, and having been previously duly sworn, was examined and testified further as follows:

Cross Examination (Continued)

Mr. Burling (To the Clerk): Will you mark this? (Hand

ing a document to the Clerk)

875 (Accordingly, a document purporting to be a copy of the Frankfurt Zeitung, was marked Defendant's Exhibit 44 for identification.)

By Mr. Burling:

Q. Do you recall, Mr. von Opel, that you testified yesterday, that while you were in Germany you customarily read the Frankfurter Zeitung? A. Please?

Q. Did you not testify yesterday that it was your custom to read the Frankfurter Zeitung when you were in Germany? A. Yes, definitely.

Q. Now I will ask you to look at Defendant's Exhibit 44, and I will ask you if you will agree that that is a photostat of a page from the Frankfurt Zeitung for August 1, 1931. A. Yes, I definitely read that.

Q. I invite your attention to an article appearing in the middle of the page, "Verschaerfung der Devisenvorschriften". A. Yes, sir.

Q. Do you think that you read that? A. I don't remember this, but it was common knowledge.

Q. And will you read the article now, to yourself. (Pause)
A. Yes.

Mr. Burling: I am sorry, I misspoke myself, if Your Honor please, I meant to say the date of this is October 1, 1931.

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By Mr. Burling:

Q. And the substance of this article is that it is expected that more stringent foreign exchange regulations

— A. Not exactly, Mr. Burling.

Q. Will you state what the substance is? A. In some

part of it says that one expects the reflow of capital into Germany.

Q. But is it not true that in so far as it relates to foreign exchange regulations, it states that a tightening of the regulations is expected to come momentarily? A. This article you referred to plays both possibilities one against the other.

Q. Do you think you read this article? A. I can't remember that.

Q. What is your best judgment now as to whether you knew on October 2 either that new foreign exchange regulations had been promulgated, or were about to be promulgated? A. I think it was generally expected.

Q. Going back to your conversations in Wiesbaden after your return from Mannheim, what did your father say to you, or what did you say to your father about calling in a new lawyer? A. We discussed this summary draft of this gift agreement in detail.

Q. You did not have a draft, did you, on the 2nd of 877 October? A. Definitely, yes; this draft I am referring to is the one Dr. Hachenburg gave me. It is called Grundgedanken.

Q. Dr. Hachenburg did not hand you any draft on October 2, did he? A. I am speaking about the paper called Grundgedanken, which Mr. Hashenburg gave me on October 2.

Q. That is translated, the heading of that, "Fundamental Considerations"? A. That is the English translation, yes.

Q. You call that a draft? A. I call it in so far a draft as this was used essentially for the final gift agreement. My father even called this draft too long, and wanted it cut.

Q. What was said about calling in a new lawyer? A. I don't remember exactly at what time my father mentioned Dr. Wronker-Flatow, it might have been prior to the 5th, or it might have been in the morning of the 5th.

Q. What is your best judgment as to the day on which he

mentioned calling in Wronker-Flatow? A. It would be difficult to make a guess after so long time.

Q. At any rate, what did your father say to you, and what did you say to him about calling in this person? A. As I just stated—

878 Mr. Gallagher: Just a minute.

Mr. Burling: May I ask Counsel not to interrupt. If there is an objection, it should be addressed to the Court. It is not proper to call out.

The Witness: As I just stated, my father went over this draft, he checked so all the provisions he wanted were in it, and then I guess it was Monday morning when he asked Dr. Wronker-Flatow to shorten it a little bit and put it in proper shape.

By Mr. Burling:

Q. Did your father say anything to you about why he wishes to abandon the draft prepared by the leading lawyer of Germany, and have some other lawyer put it in proper shape? A. This, what we now call draft, and what you translated "Summary Considerations" were the paper along which Dr. Wronker-Flatow finally drafted the gift agreement. In some parts it nearly verbally follows his outline.

Q. Mr. von Opel, you have no trouble understanding English, do you? A. Sometimes, a little bit.

Q. When you fail to understand my question, will you indicate it, and when you do understand my question, will you answer it. I said, what was said by your father as to why the draft prepared by one of Germany's greatest lawyers should be set aside and another lawyer called

879 in to put the matter in proper form. A. As I explained to you before, there was a certain hurry, and he thought it—

Q. I asked you what was said, please—"My father said"

— A. I told you that I do not remember those details.

Q. Do you have any recollection as to what your father said on this subject? A. I stated it yesterday, that he didn't want so much legal language, and so long a draft. He wanted it simplified and cut.

Q. Did he say anything about your going back to Mannheim to ask Dr. Hachenburg to prepare a simpler and shorter draft? A. No, he did not. He said to me the opposite. He said even Dr. Hachenburg, whom he knows so long, he wants to make money and wants to write two or three or four different agreements. This short one, this outline is good enough for me.

Q. What did he say about who would pay Wronker-Flatow for his services in drafting the instrument? A. He didn't mention it to me.

Q. Did you say anything to him about it? A. No.

Q. Was there any discussion at this time with Wronker-Flatow about who would pay his fee for this legal service? A. I think it was not the intention of either
880 party to pay or accept any fees for this short and quick redrafting of this summary consideration draft.

Q. At any rate, Wronker-Flatow was called in, you think, on the 5th? A. Yes, that's what I remember.

Q. Did you tell him that Hachenburg had expressed a desire to confer with your father about the legal problems involved? A. That's what I told my father right away when I came from Hachenburg.

Q. Again, you can understand my question, can you not? Did you tell this to Wronker-Flatow? A. To Wronker-Flatow, no.

Q. You didn't mention to him the fact that Germany's greatest lawyer wanted to have a conference on that subject?

A. No, that was none of Dr. Wronker-Flatow's business, he was just asking to shorten this specific draft.

Q. He not only shortened it, he lengthened it in at least one respect, did he not? A. He put it into legal language.

Q. Did he not put in new provisions that were not in the Hachenburg draft? A. I do not recollect that.

Q. Do you not recollect that he inserted provisions
881 about the male line of descent in the Opel family?

A. Oh, yes.

Q. That was not in Hachenburg's draft, was it? A. That was not in Hachenburg's draft. That was done upon my wish.

Q. When was it decided that you should sail on the Europa which sailed from Bremerhaven on the 7th of October? A. The purpose of the straight wire to Mr. Smith had to do with that, I think.

Q. I wonder if you will answer the question. When was it decided that you should sail on the Europa? A. I do not understand what you mean by "decided." It was my intention to go to America as fast as I could go.

Q. You and your father must have come at some time to a decision that you should sail on the Europa, is that not true? A. At a certain point, certainly, the Europa was leaving, as you said, on October 7, so, of course, it was necessary for me to make this boat, either in Bremen or Cherbourg.

Q. When was it decided between you and your father that you would take the boat? A. I do not know the exact date, but it must have been on the 5th or the 6th.

Q. And is it not the fact that the reason Hachenburg's draft was abandoned and Wronker-Flatow told
882 to get up a quick draft on the 5th was because you had to leave Wiesbaden on the 6th in order to catch the boat? A. There was plenty of time to redraft this short agreement.

Q. Is that not the real reason for abandoning the Hachenburg draft, and having Wronker-Flatow get up another draft? A. The real reason, if you ask for the real reason, it was my father's wish that not unnecessarily large amount of lawyer fees would be spent, and he even asked me, he said I should pay for the draft of Dr. Hachenburg.

Q. What was the reason for the great haste in preparing the Wronker-Flatow draft of the gift agreement? A.

There was no great haste, Mr. Burling. I think it wouldn't take any lawyer longer than, let's say, half an hour or an hour to take this summary considerations, or the principal points were in it, and put it in proper legal form.

Q. You knew that Dr. Hachenburg thought it desirable to give further consideration to the matter, did you not? A. Yes.

Q. Thank you. A. He expressed his wish.

Q. That is what I said. The answer is, yes. A. Yes.

Q. Thank you. You have been in contact with
883 lawyers a great deal in your life, have you not? A. No, I can say unfortunately—fortunately not, it began here in America.

Q. You are not familiar with lawyers? A. No, definitely not.

Q. Well, you have been in legal proceedings in connection with your father's fine? A. That was after the drafting of the gift.

Q. I say now. A. Now, yes, certainly.

Q. You have been involved in litigation since 1931 off and on right down to date, is that not true? A. No, you couldn't say that.

Q. In 1933 and '34 you were involved in the proceedings leading up to the fine? A. Pardon me, Mr. Burling, I was not involved personally.

Q. You were associated with lawyers at that time, were you not? A. I talked to my father's lawyers, if that's what you mean.

Q. Yes, that's what I mean. And in 1936 you were involved, you were the principal witness in the Erik Deku prosecution, I believe. A. Yes.

Q. And in 1935 you had Isidor Kresel and the firm of Davis, Polk take a case through the Treasury, through the District Court, and to the Circuit Court of Appeals
884 in New York, did you not? A. Yes, that is what the lawyers did.

Q. In 1937 you were sued by someone, were you not, in

this country? A. Yes, it was what you call a nuisance suit.

Q. How much did you settle it for? A. I was sued for—

Q. How much did you settle it for? A. It was settled, I think, for 13 or 15 thousand dollars.

Q. Was it not closer to a hundred thousand? A. About which suit you are talking, Mr. Burling?

Q. The suit in which you evaded service of summons by going to Montreal in 1937. A. Do you mean the suit of Mr. Cole?

Q. Yes. A. C-O-L-E?

Q. That's right. A. He sued me, as I endeavored to tell you, for half a million dollars.

Q. I asked you what you settled it for. A. And it was settled, if I remember correctly, between 12 and 15 thousand dollars.

Q. It does not refresh your recollection if I suggest to you that it was closer to a hundred thousand? A. 885 Any suit, which was settled for a hundred thousand?

Q. Yes, that suit. Is it not a fact that it was settled for about \$100,000? A. That is the first thing I hear, Mr. Burling.

Q. And you had lawyers in connection with the attachment of your father's account in Switzerland, did you not? A. Yes, I employed lawyers in Switzerland.

Q. And you had lawyers off and on in connection with these various American investments which are the subjects of this action, did you not? A. Not to a great extent. Of course, if you set up a corporation a lawyer has to do the incorporation work, and the statutes and all those things.

Q. You had lawyers in connection with your internment, did you not? A. Lawyers, as you know, you yourself, they are not admitted in those proceedings. They only could appear as so-called friends of the accused.

Q. Did not Isidor Kresel file briefs in your behalf? A. Yes, he did.

Q. This case has been going on for years, has it not?
A. Yes, unfortunately.

Q. And you have had lawyers in this case? A. Yes, definitely.

Q. Have you ever seen a lawyer, except Wronker-
886 Flatow, who would draw up, who told you that he could draw up an instrument transferring an estate of \$3,700,000, setting up complicated reserve entries in the space of half an hour from the time he is called in on the problem? A. There are no complicated interests to protect. You are implying something complicated. There was nothing complicated.

Q. Did you hear Dr. Heinrich Kronstein testify the other day in this case? A. Yes.

Q. Did you consider his testimony on the law, German law, relating to the terms of the gift agreement complicated or very simple? A. I think for a German lawyer rather simple.

Q. Are you sure, are you absolutely certain that the gift agreement was executed on October 5, 1931? A. I am definite.

Q. Please let me finish—and not on any other date? A. I am absolutely definite about it. I would not remember, of course, this exact date, but I saw the document and a day later I got the power of attorney.

Q. Have you always been absolutely clear in your mind that the date was October 5, 1931? A. No, sir, I only knew, if anybody asked me, when was this gift made, I only
887 knew that it was about the end of September or beginning of October. I never could remember any specific dates, and all dates I mention now, I had to refresh my recollections; that is over 17 years ago.

Q. There was a time when you were uncertain as to when this had been executed, is that not so? A. I did not get your question.

Q. Was there not a time when you were uncertain as to

the exact date? A. As to the exact date, that is possible, that I gave an answer that it was about September or October. It is absolutely possible that this exact date off-hand was not in my memory.

Q. You were released from internment shortly after V-E Day, were you not? A. Yes.

Q. And at that time this litigation was very important to you, was it not? A. At this time? I think the litigation did not start yet, or did it? Oh, yes, the first suit, I think, was brought in '44, wasn't it?

Q. I believe so. A. Yes.

Q. When you were released from internment, did you not at once go and look at the documents, or try to get the documents together and consult counsel about this lawsuit? A. I personally had very, very few documents, and we got most of the documents from the Department of Justice, and I certainly discussed those documents with my lawyers.

Q. And as late as October 17, 1946, you were unable to state the date of the transfer correctly, is that not true?

A. At this time I have not yet received, seen those documents. The documents, most of them, were received by my lawyers about half a year ago, some even only a few months, some even a few weeks ago.

Q. And it is correct, is it not, that you were mistaken as to the date on which the transfer took place, when you were interrogated on October 17? A. You imply something which is not correct, Mr. Burling, I was asked without having any documents, without having any opportunity to refresh my recollection.

Q. You made that statement. The question is simply, is it not true that you were mistaken? A. I was not mistaken. I gave the date, September or October.

Q. Now, Mr. von Opel, when did you see the gift agreement which is Plaintiff's Exhibit 5, for the first time after your release from internment? A. Are you speaking about

copies, or are you speaking about photostat of the original, or the original itself?

Q. I am speaking about any copy which you believe to be a true and correct copy. A. I couldn't offhand make a statement of the sort. It might even be that I had one in my files.

Q. Don't you know that you had one in your files? A. That is possible.

Q. Is it not Exhibit B to your affidavit in the gold case? I show you now from Defendant's Exhibit 8 page 138 a document, Exhibit B; is that not the English translation?

A. I think that is the translation of it, yes, done around 1934 or '5.

Q. Yes. A. Yes.

Q. But that was available to you at all times in New York after you were released from internment, was it not? A. Oh, certainly.

Q. And didn't you refresh your recollection as to the terms of the gift agreement and the date of the gift agreement after you were released from internment? A. When I saw the document and read it, and it was dated October 5, I of course knew that the date of the gift was October 5.

Q. Then will you explain why you said the date was something else, when you were interrogated on October 17, 1946, by Government counsel? A. At this time—

890 Mr. Gallagher: I object. The record does not reflect that he gave any other date. The record reflects the latter part of September or October. The record does not state a date.

By Mr. Burling:

Q. Mr. von Opel, were you asked this question when you sold these shares, the proceeds were deposited first

in the name of your father, and did you give this answer: "Those shares were given to me by virtue of this gift agreement. I think it is September 31, is it not?" A. On which date?

Q. September 31. Is that not what you said when you were interrogated on October 17? A. That was my recollection, without seeing any documents. I told you I only knew the about time.

Q. You had the document available at that time. A. Pardon me, no. You always make surprise parties. You all of a sudden ask questions, and I said an about date.

Q. But at this time you were very much concerned with this lawsuit. You had taken it through the District Court, and it was in the Circuit Court here, is that not true? A. But I had not yet gone into the details.

Q. You did not take the trouble to look at the gift agreement, which was available to you in the record of the gold case, is that right? A. That is a rather general question, Mr. Burling.

Q. Will you answer it, please? A. What do you mean by that? Certainly I had an opportunity to see it, but it's at the time I didn't pay any attention to refresh my recollection.

Mr. Gallagher: I would like to ask Mr. Burling a question: Was the record of the gold case with Mr. Looney or Mr. Worthington in New York.

Mr. Burling: The record of the gold case was obviously available to defendant and defendant's counsel, who argued this case.

The Court: I think we will have to adjourn at this time until two o'clock.

(A recess was accordingly taken from 12:30 o'clock, p.m., to 2:00 o'clock, p.m. of the same day.)

895 . FRITZ VON OPEL resumed the stand and was examined and testified further as follows:

Cross-Examination (Continued)

By Mr. Burling:

Q. Just before the luncheon recess, Mr. von Opel, the question was raised as to whether you had access
896 to the gold case affidavit at the time you were examined by Mr. Looney and by Mr. Worthington in New York in 1946.

Did you have that gold case affidavit before you at that hearing? A. I don't remember it.

Q. I will read you these questions and these answers and see if it refreshes your recollection.

Mr. Gallagher: Will you indicate the page, please?

Mr. Burling: Starting at page 45—

By Mr. Burling:

Q. (Reading) "Question: When did you first become connected with Uebersee?

"Answer: I think all of those details are stated in my rather exhaustive affidavit in the gold case, and offhand I can only say I acquired control in the early thirties."

"Question: In the early thirties?

"Answer: Yes. I think all the details as to how much was paid, and how it was paid, are all mentioned in this affidavit."

Does that refresh your recollection as to whether you had access to the gold case affidavit at the time of that interrogation? A. It is possible that Mr. Connor had it.

Q. But you referred to the affidavit as "this affidavit", in that proceeding, didn't you? A. I don't
897 remember whether the book itself was present at the time.

Mr. Burling: If Your Honor please, Mr. Gallagher asked me to state as a fact whether the book was present. I am advised, whether or not Mr. von Opel produced it, Mr. Worthington did have it at that time.

Mr. Gallagher: I asked on what page that portion about Plaintiff's Exhibit 31 was read from. Was that before page 45, or after?

Mr. Burling: I don't know. We will tell you in a moment.

Mr. Eam: It is page 51.

Mr. Gallagher: Had the affidavit been shown at the time?

Mr. Burling: Are we conducting a lawsuit, or a general conversation?

By Mr. Burling:

Q. Do you know of your own knowledge, Mr. von Opel, whether on October 5 Wronker-Flatow consulted any law books before drawing up Plaintiff's Exhibit 5? A. I couldn't tell you that. Mr. Wronker-Flatow had his own office.

Q. If you don't know, the answer is no, and let us proceed. A. No.

Q. Do you know whether he gave any study to the provisions of the German income tax law? A. I do not know that.

Q. Did you have any discussion with him on this day as to who would pay the tax on the income which might accrue from the proceeds of the gift? A. I don't think that this question at this time was discussed at all. We all knew that ultimately some income tax had to be paid. The only question was whether my father paid it when he sold it, or whether I paid it when I sold it.

Q. Are you talking about income tax now, or what we call a capital gains tax? A. You asked me about an income tax, and I thought you both meant a capital gains tax.

Q. I am talking about income which might accrue in the future from the proceeds of the 600 Opel shares.

Was there any discussion between you and your father and Wronker-Flatow as to who would be liable for the income tax on that income? A. As no income was stipulated in the contract, I don't know what you refer to, Mr. Burling. What income do you mean?

Q. Income which would accrue. You have testified already, Mr. von Opel, that your father told you that 899 the proceeds of these 600 shares would bring in an income of nearly a million marks a year. That income would be taxable to somebody, wouldn't it, under German income tax law? A. No. I think, Mr. Burling, you are mixing things up. We speak about a million income just as a matter of speaking. If those shares would be sold against dollars, of course, the income would be in dollars.

So it was only in a manner of speaking we said 20 per cent I should keep and the other 80 per cent I should account to my sister. Whether the income was in marks or in dollars, it didn't make any difference. It was an accounting process.

Q. Whether or not it was in pengos or dollars or marks or pounds, it would be income and somebody would have to pay the income tax on it—isn't that so? A. No, Mr. Burling.

Q. Will you explain why the income, which in the marks equivalent would be a million marks a year, would not be taxable to somebody? A. It depends upon how it is taxable. If the securities were put into a corporation, it would be different.

Q. Fine. And did you have any conversation with Wronker-Flatow about this income tax problem? A. I think not. I don't remember it. It might have been; I don't remember it.

900 Q. You don't have any present recollection of any talk at all about the problem of who would have to pay the income tax on the income? A. I think it was not one of the matters with which we were concerned at the time, Mr. Burling.

Q. Did you have any discussion as to what effect, if any, upon income tax liability the so-called usufructuary provisions might have? A. I think in the letter of Dr. Hachenburg—

Q. The question is conversations between you, Wronker-Flatow and your father. A. I don't remember these conversations.

Q. So far as you know, you did not have any? A. My father never wanted to draw any income. So it was impossible that he figured income taxes for himself, on an income he didn't want to draw.

Q. A lot of people don't want to pay income taxes that do have to pay them. Isn't that so? A. Yes. But I was the one, you see, concerned with this question, and not my father.

Q. And did you and Wronker-Flatow discuss the possibility— A. I don't think so.

Q. Let me finish the question, please.

Did you and Wronker-Flatow discuss the possibility that you would have to pay the income tax on the entire income, even though you were allowed to keep only 20 per cent of it for yourself? A. I think you don't see, Mr. Burling, the provisions of the gift agreement.

Q. You are absolutely right. A. You don't see it.

Q. I certainly don't. But did you have any such discussion with Wronker-Flatow? A. I don't think I had, because he wasn't my lawyer.

Q. And you don't think your father did, either, do you? A. I am certain that my father didn't ask him about income taxes on an income he never intended to draw.

Q. But the income did accrue. What was going to happen to the income? A. I would have to pay the taxes, if there was an income.

Q. All the tax? Is that right? A. It depends if it is incorporated in a corporation, or it depends upon the state of it.

Q. But somebody was going to own these assets. A. Certainly.

Q. And somebody, therefore, would receive the income. Isn't that so? A. Certainly.

902 Q. And you were to receive 20 per cent of the income. Isn't that so? A. No.

Q. Isn't that what you testified to two days ago? A. That is not—

Q. Isn't that what you testified to two days ago? A. I told you it was just an accounting procedure. So I had to account for the remaining 80 per cent with my sister.

Q. But did you not say your father said, "I want you to have 20 per cent, which will be about as much as your salary previously was, and the rest of the money is for the benefit of your sister"?

Mr. Gallagher: Your Honor, I have to interrupt Mr. Burling. The record, I am certain, does not state that to be a fact, that the rest of the money was for the benefit of the sister.

The Court: He can ask the witness what his recollection was.

By Mr. Burling:

Q. Didn't you say that? A. That the 80 per cent was for the benefit of my sister?

Q. Isn't that right? A. How could I say it, when it was for accounting purposes?

903 Q. Who was to be liable for tax purposes, as you understood it? A. For tax purposes, always the owner of the property was liable.

Q. Fine. Who did you understand was to be liable for the tax on the 80 per cent of the income? A. You cannot separate those two groups.

Q. Can't you answer my question? A. No, I cannot. It isn't clear, Mr. Burling. I am sorry; I don't understand it.

Q. Twenty per cent of the income was to be held by you, you testified. That leaves 80 per cent. A. I didn't say it was to be held by me.

Q. Or used by you. A. I said there were those figures to be used for accounting purposes.

Q. Didn't you testify on direct examination that your father said you were to take 20 per cent, which would be about the same as your salary— A. He wasn't—

Q. Didn't you testify to that effect? A. I testified that both children should be on an even footing.

Q. Mr. von Opel, please answer my question, so we will not be here indefinitely—

904 Q. Didn't you testify that 20 per cent was to be used by you as the approximate equivalent of your old salary? A. That is the reason that my father—

Q. Did you testify to that effect? The answer is yes or no. A. I do not recollect—if the record will show it.

Q. You don't know whether you testified to that or not? A. I testified in general about this accounting procedure. You are mixing up two things, Mr. Burling. No income tax authority in the world would accept a division of 80 per cent and 20 per cent. I could not come to the American tax authorities and say I only got 20 per cent. I had to pay the income tax, as the owner of the property, of the full 100 per cent.

Q. Let us talk about the German tax authorities. What did you intend, on October 5, to do with respect to the income tax, in Germany, due on the 80 per cent of the income? A. Pardon me. I was not concerned with any income tax in Germany, because I was living outside of Germany.

Q. All right. A. So no income tax to pay inside of Germany was due.

Q. And it was contemplated that if these shares were sold, the proceeds would be invested ultimately in the United States? Isn't that true? A. It was left to me what to do about it.

905 Q. And you intended to invest in United States properties, didn't you? A. I did that, yes.

Q. You intended to do that, didn't you? A. The intention at this time, Mr. Burling, wasn't clear. There was a chance that if General Motors would have accepted my proposal for the gold clause, that I would have gone on with the escrow agreement.

Q. I said "if"—that if you sold the Opel shares, you intended to buy American investments, didn't you? A. It didn't necessarily mean American investments—some investments.

Q. You knew, wherever you were going to live, you would have to pay an income tax, didn't you? A. Definitely.

Q. And was it your understanding you were going to have to pay an income tax on all of the proceeds? That is, on every cent of income derived from these shares, all the shares, it was to be taxable to you? Is that your testimony? A. I think the owner has to pay the income tax.

Q. Fine. Will you answer my question? A. And the law looks to the beneficiary owner.

Q. Fine. I want an answer to my question, and not a lecture on abstract law. A. I do not understand you, 906 Mr. Burling, what you mean. Which country do you mean?—Germany?

Q. Whatever country you were going to settle in and therefore were going to have to pay income taxes in, was it your understanding that you were to be liable for all of the income? A. Certainly. It depends. In some countries you can make agreements on the amount of income tax you pay. That all depends. It is such a general question. If you ask me a specific question, I can answer it clearly.

Q. At any rate, the tax problem was a very involved one, was it not? A. At this time the tax problem didn't bother us at all, Mr. Burling.

Q. Won't you agree at this time the problem of who

had to pay the income taxes was an involved problem?
A. Not at all. What was involved about it?

Q. You haven't been able to tell me what was your understanding about the income taxes yet, have you? A. I told you that in every country the owner or the beneficiary owner has to pay the income taxes. That was clear to me from the first.

Q. But since we do not know who the owner of this property would be, under the usufructuary provisions, we don't know who was to be liable for the income taxes.

A. Pardon me. The ownership of title was always clear.

Q. It is clear to you that tax liability does not run to the owner of title, but to the person who gets the beneficial interest in the income? A. The beneficial owner, yes.

Q. Who the beneficial owner of this property was to be, under the gift agreement, is by no means clear. Isn't that true? A. No, I didn't say that.

Q. Isn't it true that it is by no means clear who the beneficial owner would be? A. If my parents would not draw any income, I would be the beneficiary, I would have to pay the entire income taxes. I could only claim an exemption for the part eventually drawn by my parents, if they desired.

Q. But you had no discussion whatever with any lawyer prior to drawing up this instrument? A. On income taxes?

Q. Yes. A. No.

Q. Did you ask Wronker-Flatow as to whether you could minimize the taxes by assigning the proceeds of the gift to a holding company? A. I think I did not discuss this problem with Dr. Wronker-Flatow.

908 Q. Is it not true that you told Dr. Hachenburg that a man named Faust is concerned about the problem whether or not any income tax may be payable under the provisions of Section 30, subsection 1, of the

Income Tax Act, "If your son sells the shares which you transferred to him by way of gift"? A. I think that has to do with the capital gains tax.

Q. I see. But Faust did raise a problem about the capital gains tax, did he? A. Certainly; everybody knows—

Q. Did he? The answer to that is yes or no. A. Yes, I think so. I didn't speak to Dr. Faust.

Q. But you did tell Dr. Hachenburg that Faust was concerned about it, didn't you? A. Yes, that is possible.

Q. Will you look at Plaintiff's Exhibit 7 and see if you and Hachenburg did not have an extended discussion about income taxes and other tax liabilities (handing)?

I refer you to paragraph 5.

Mr. Ingoldsby: Is that paragraph numbered 5?

Mr. Burling: Yes.

May I hand Your Honor the paragraph there (indicating)?

By Mr. Burling:

Q. Does that refresh your recollection whether you had a detailed discussion with Hachenburg? A. 909 Dr. Hachenburg refers to two different kinds of taxes—

Q. Will you again, once more, please answer my question?

Does that refresh your recollection as to whether you had a detailed discussion on October 2, 1931, with Hachenburg about taxes? A. I do not know that. I do not remember it, because this letter was written after I had left.

Q. But does that letter not refer to a matter communicated to Hachenburg by you?

Will you look at Section 5 again? A. I don't find any such reference in paragraph 5. If you will show it to me. I read it all over, but I didn't see it.

